



Reprinted
April 14, 2009

ENGROSSED HOUSE BILL No. 1096

DIGEST OF HB 1096 (Updated April 13, 2009 6:56 pm - DI 52)

Citations Affected: IC 6-1.1; noncode.

Synopsis: Mortgage deduction application. Provides that a sales disclosure form properly filed by the purchaser of a residence constitutes an application for the property tax standard deduction. Provides two ways of applying for a mortgage deduction: (1) the person recording the mortgage, contract, or memorandum may file a statement with the county recorder for real property or with the county auditor for a mobile home not assessed as real property or a manufactured home not assessed as real property; or (2) the person claiming the mortgage deduction may file a statement with the county auditor. Provides that a real estate closing agent is not liable for any damages claimed by the property owner or contract purchaser because of any problem with the filing of a claim for the mortgage property tax deduction with a county recorder.

Effective: Upon passage; January 1, 2009 (retroactive).

Barnes, Bischoff, Smith M, DeLaney
(SENATE SPONSORS — MERRITT, WYSS, TAYLOR, MILLER, ZAKAS)

January 8, 2009, read first time and referred to Committee on Government and Regulatory Reform.

January 27, 2009, amended, reported — Do Pass.

February 20, 2009, read second time, amended, ordered engrossed. Engrossed.

February 24, 2009, read third time, passed. Yeas 93, nays 0.

SENATE ACTION

February 25, 2009, read first time and referred to Committee on Tax and Fiscal Policy.

April 9, 2009, amended, reported favorably — Do Pass.

April 13, 2009, read second time, amended, ordered engrossed.

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April 14, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1096

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-1.1-5.5-5, AS AMENDED BY P.L.144-2008,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 5. (a) The department of local government
4 finance shall prescribe a sales disclosure form for use under this
5 chapter. The form prescribed by the department of local government
6 finance must include at least the following information:
7 (1) The key number (as defined in IC 6-1.1-1-8.5) of each parcel.
8 (2) With respect to each parcel, whether the entire parcel is being
9 conveyed.
10 (3) The address of each improved parcel.
11 (4) The date of the execution of the form.
12 (5) The date the property was transferred.
13 (6) Whether the transfer includes an interest in land or
14 improvements, or both.
15 (7) Whether the transfer includes personal property.
16 (8) An estimate of the value of any personal property included in
17 the transfer.

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(9) The name, address, and telephone number of:

(A) each transferor and transferee; and

(B) the person that prepared the form.

(10) The mailing address to which the property tax bills or other official correspondence should be sent.

(11) The ownership interest transferred.

(12) The classification of the property (as residential, commercial, industrial, agricultural, vacant land, or other).

(13) Subject to subsection (c), the total price actually paid or required to be paid in exchange for the conveyance, whether in terms of money, property, a service, an agreement, or other consideration, but excluding tax payments and payments for legal and other services that are incidental to the conveyance.

(14) The terms of seller provided financing, such as interest rate, points, type of loan, amount of loan, and amortization period, and whether the borrower is personally liable for repayment of the loan.

(15) Any family or business relationship existing between the transferor and the transferee.

(16) A legal description of each parcel subject to the conveyance.

(17) Whether the transferee is using the form to claim ~~the following one (1) or more deductions under IC 6-1.1-12-44~~ for property taxes first due and payable in a calendar year after 2008.

~~(A) One (1) or more deductions under IC 6-1.1-12-44.~~

~~(B) The homestead credit under IC 6-1.1-20-9-3.5.~~

(18) If the transferee uses the form to claim the ~~homestead credit standard deduction~~ under ~~IC 6-1.1-20-9-3.5, IC 6-1.1-12-37~~, the name of any other county and township in which the transferee of residential real property owns or is buying residential real property.

(19) Other information as required by the department of local government finance to carry out this chapter.

If a form under this section includes the telephone number or the Social Security number of a party, the telephone number or the Social Security number is confidential.

(b) The instructions for completing the form described in subsection

(a) must include the information described in IC 6-1.1-12-43(c)(1).

(c) If the conveyance includes more than one (1) parcel as described in section 3(h) of this chapter, the form:

(1) is not required to include the price referred to in subsection

(a)(13) for each of the parcels subject to the conveyance; and

(2) may state a single combined price for all of those parcels.

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SECTION 2. IC 6-1.1-12-2, AS AMENDED BY P.L.144-2008, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]: Sec. 2. (a) Except as provided in section 17.8 of this chapter and subject to section 45 of this chapter, **a person who desires to claim to qualify for the deduction provided by section 1 of this chapter must a statement must be filed under subsection (b) or (c).**

(b) **To apply for the deduction under section 1 of this chapter, the person recording the mortgage, contract, or memorandum with the county recorder may file a written statement with the county recorder containing the information described in subsection (e)(1), (e)(2), (e)(3), (e)(4), (e)(6), (e)(7), and (e)(8). The statement must be prepared on the form prescribed by the department of local government finance and be signed by the property owner or contract purchaser under the penalties of perjury. The form must have a place for the county recorder to insert the record number and page where the mortgage, contract, or memorandum is recorded. Upon receipt of the form and the recording of the mortgage, contract, or memorandum, the county recorder shall insert on the form the record number and page where the mortgage is recorded and forward the completed form to the county auditor. The county recorder may not impose a charge for the county recorder's duties under this subsection. With respect to real property the statement must be filed with the county recorder during the year for which the person wishes to obtain the deduction. With respect to a mobile home that is not assessed as real property or a manufactured home that is not assessed as real property, the statement must be filed with the county auditor during the twelve (12) months before March 31 of each year for which the individual wishes to obtain the deduction.**

(c) **Alternatively, to apply for a deduction under section 1 of this chapter, a person who desires to claim the deduction may file a statement in duplicate, on forms prescribed by the department of local government finance, with the auditor of the county in which the real property, mobile home not assessed as real property, or manufactured home not assessed as real property is located. With respect to real property the statement must be filed during the year for which the person wishes to obtain the deduction. With respect to a mobile home that is not assessed as real property or a manufactured home that is not assessed as real property, the statement must be filed during the twelve (12) months before March 31 of each year for which the individual wishes to obtain the deduction. The statement may be filed in person**

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or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. In addition to the statement required by this subsection, a contract buyer who desires to claim the deduction must submit a copy of the recorded contract or recorded memorandum of the contract, which must contain a legal description sufficient to meet the requirements of IC 6-1.1-5, with the first statement that the buyer files under this section with respect to a particular parcel of real property.

(d) Upon receipt of:

(1) the statement **under subsection (b); or**

(2) **the statement under subsection (c)** and the recorded contract or recorded memorandum of the contract;
the county auditor shall assign a separate description and identification number to the parcel of real property being sold under the contract.

~~(b)~~ (e) The statement referred to in ~~subsection (a)~~ **subsections (b) and (c)** must be verified under penalties for perjury. ~~and~~ The statement must contain the following information:

(1) The balance of the person's mortgage or contract indebtedness on the assessment date of the year for which the deduction is claimed.

(2) The assessed value of the real property, mobile home, or manufactured home.

(3) The full name and complete residence address of the person and of the mortgagee or contract seller.

(4) The name and residence of any assignee or bona fide owner or holder of the mortgage or contract, if known, and if not known, the person shall state that fact.

(5) The record number and page where the mortgage, contract, or memorandum of the contract is recorded.

(6) A brief description of the real property, mobile home, or manufactured home which is encumbered by the mortgage or sold under the contract.

(7) If the person is not the sole legal or equitable owner of the real property, mobile home, or manufactured home, the exact share of the person's interest in it.

(8) The name of any other county in which the person has applied for a deduction under this section and the amount of deduction claimed in that application.

~~(c)~~ (f) The authority for signing a deduction application filed under this section may not be delegated by the real property, mobile home, or manufactured home owner or contract buyer to any person except upon an executed power of attorney. The power of attorney may be contained in the recorded mortgage, contract, or memorandum of the contract, or

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in a separate instrument.

(g) A closing agent, as defined in IC 6-1.1-12-43(a)(2), is not liable for any damages claimed by the property owner or contract purchaser because of:

(1) the closing agent's failure to provide the written statement described in subsection (b);

(2) the closing agent's failure to file the written statement described in subsection (b);

(3) any omission or inaccuracy in the written statement described in subsection (b) that is filed with the county recorder by the closing agent; or

(4) any determination made with respect to a property owner's or contract purchaser's eligibility for the deduction under section 1 of this chapter.

(h) The county recorder may not refuse to record a mortgage, contract, or memorandum because the written statement described in subsection (b):

(1) is not included with the mortgage, contract, or memorandum;

(2) does not contain the signatures required by subsection (b);

(3) does not contain the information described in subsection (e); or

(4) is otherwise incomplete or inaccurate.

SECTION 3. IC 6-1.1-12-44, AS ADDED BY P.L.144-2008, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]: Sec. 44. (a) A sales disclosure form under IC 6-1.1-5.5:

(1) that is submitted:

(A) as a paper form; or

(B) electronically;

on or before December 31 of a calendar year to the county assessor by or on behalf of the purchaser of a homestead (as defined in ~~IC 6-1.1-20.9-1~~ **section 37 of this chapter**) assessed as real property;

(2) that is accurate and complete;

(3) that is approved by the county assessor as eligible for filing with the county auditor; and

(4) that is filed:

(A) as a paper form; or

(B) electronically;

with the county auditor by or on behalf of the purchaser; constitutes an application for the deductions provided by sections 26,

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29, 33, ~~and 34~~, **and 37** of this chapter with respect to property taxes first due and payable in the calendar year that immediately succeeds the calendar year referred to in subdivision (1).

(b) Except as provided in subsection (c), if:

(1) the county auditor receives in a calendar year a sales disclosure form that meets the requirements of subsection (a); and
 (2) the homestead for which the sales disclosure form is submitted is otherwise eligible for a deduction referred to in subsection (a);
 the county auditor shall apply the deduction to the homestead for property taxes first due and payable in the calendar year for which the homestead qualifies under subsection (a) and in any later year in which the homestead remains eligible for the deduction.

(c) Subsection (b) does not apply if the county auditor, after receiving a sales disclosure form from or on behalf of a purchaser under subsection (a)(4), determines that the homestead is ineligible for the deduction.

SECTION 4. [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]
IC 6-1.1-12-2 and IC 6-1.1-12-44, both as amended by this act, apply only to:

(1) **sales disclosure forms and mortgage deduction application forms filed after 2008; and**
 (2) **property taxes first due and payable after 2009.**

SECTION 5. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1096, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 36, strike "and".

Page 4, line 36, after "34" insert ", **and 37**".

and when so amended that said bill do pass.

(Reference is to HB 1096 as introduced.)

BARTLETT, Chair

Committee Vote: yeas 11, nays 1.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1096 be amended to read as follows:

Page 2, line 27, delete "mortgage deduction under IC 6-1.1-12-2 or the".

Page 3, delete lines 2 through 42, begin a new paragraph and insert:

"SECTION 2. IC 6-1.1-12-2, AS AMENDED BY P.L.144-2008, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]: Sec. 2. (a) Except as provided in section 17.8 of this chapter and subject to section 45 of this chapter, ~~a person who desires to claim to qualify for~~ the deduction provided by section 1 of this chapter ~~must a statement must be filed under subsection (b) or (c).~~

(b) To apply for the deduction under section 1 of this chapter, the person recording the mortgage, contract, or memorandum with the county recorder may file a written statement with the county recorder containing the information described in subsection (e)(1), (e)(2), (e)(3), (e)(4), (e)(6), (e)(7), and (e)(8). The statement must be prepared on the form prescribed by the department of local government finance and be signed by the property owner or contract purchaser under the penalties of perjury. The form must have a place for the county recorder to insert the record number and page where the mortgage, contract, or memorandum is recorded. Upon receipt of the form and the recording of the mortgage, contract, or memorandum, the county recorder shall

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insert on the form the record number and page where the mortgage is recorded and forward the completed form to the county auditor. The county recorder may not impose a charge for the county recorder's duties under this subsection. With respect to real property the statement must be filed with the county recorder during the year for which the person wishes to obtain the deduction. With respect to a mobile home that is not assessed as real property or a manufactured home that is not assessed as real property, the statement must be filed with the county recorder during the twelve (12) months before March 31 of each year for which the individual wishes to obtain the deduction.

(c) Alternatively, to apply for a deduction under section 1 of this chapter, a person who desires to claim the deduction may file a statement in duplicate, on forms prescribed by the department of local government finance, with the auditor of the county in which the real property, mobile home not assessed as real property, or manufactured home not assessed as real property is located. With respect to real property the statement must be filed during the year for which the person wishes to obtain the deduction. With respect to a mobile home that is not assessed as real property or a manufactured home that is not assessed as real property, the statement must be filed during the twelve (12) months before March 31 of each year for which the individual wishes to obtain the deduction. The statement may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. In addition to the statement required by this subsection, a contract buyer who desires to claim the deduction must submit a copy of the recorded contract or recorded memorandum of the contract, which must contain a legal description sufficient to meet the requirements of IC 6-1.1-5, with the first statement that the buyer files under this section with respect to a particular parcel of real property.

(d) Upon receipt of:

- (1) the statement under subsection (b); or
- (2) the statement under subsection (c) and the recorded contract or recorded memorandum of the contract;

the county auditor shall assign a separate description and identification number to the parcel of real property being sold under the contract.

~~(b)~~ (e) The statement referred to in ~~subsection (a)~~ subsections (b) and (c) must be verified under penalties for perjury. ~~and~~ The statement must contain the following information:

- (1) The balance of the person's mortgage or contract indebtedness on the assessment date of the year for which the deduction is claimed.

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(2) The assessed value of the real property, mobile home, or manufactured home.

(3) The full name and complete residence address of the person and of the mortgagee or contract seller.

(4) The name and residence of any assignee or bona fide owner or holder of the mortgage or contract, if known, and if not known, the person shall state that fact.

(5) The record number and page where the mortgage, contract, or memorandum of the contract is recorded.

(6) A brief description of the real property, mobile home, or manufactured home which is encumbered by the mortgage or sold under the contract.

(7) If the person is not the sole legal or equitable owner of the real property, mobile home, or manufactured home, the exact share of the person's interest in it.

(8) The name of any other county in which the person has applied for a deduction under this section and the amount of deduction claimed in that application.

~~(e)~~ **(f)** The authority for signing a deduction application filed under this section may not be delegated by the real property, mobile home, or manufactured home owner or contract buyer to any person except upon an executed power of attorney. The power of attorney may be contained in the recorded mortgage, contract, or memorandum of the contract, or in a separate instrument."

Page 4, delete lines 1 through 16.

Page 4, line 35, delete "1,".

Page 5, line 13, after "forms" insert "**and mortgage deduction application forms**".

(Reference is to HB 1096 as printed January 28, 2009.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1096, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, between lines 1 and 2, begin a new paragraph and insert:

"(g) A closing agent, as defined in IC 6-1.1-12-43(a)(2), is not liable for any damages claimed by the property owner or contract purchaser because of:

- (1) the closing agent's failure to provide the written statement described in subsection (b);**
- (2) the closing agent's failure to file the written statement described in subsection (b);**
- (3) any omission or inaccuracy in the written statement described in subsection (b) that is filed with the county recorder by the closing agent; or**
- (4) any determination made with respect to a property owner's or contract purchaser's eligibility for the deduction under section 1 of this chapter.**

(h) The county recorder may not refuse to record a mortgage, contract, or memorandum because the written statement described in subsection (b):

- (1) is not included with the mortgage, contract, or memorandum;**
- (2) does not contain the signatures required by subsection (b);**
- (3) does not contain the information described in subsection (e); or**
- (4) is otherwise incomplete or inaccurate."**

and when so amended that said bill do pass.

(Reference is to HB 1096 as reprinted February 21, 2009.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1096 be amended to read as follows:

Page 3, line 28, delete "recorder" and insert "**auditor**".

(Reference is to EHB 1096 as printed April 10, 2009.)

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